

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

In re:)
TOA, LLC,) Case No. 10-01391
Debtor.) Chapter 7
) Judge Lundin
)

**OBJECTION TO EXPEDITED MOTION TO
WITHDRAW BY COUNSEL FOR THE DEBTOR**

Wyndham Vacation Resorts, Inc. ("Wyndham") files this Objection to the Expedited Motion to Withdraw as Counsel for Debtor (the "Motion to Withdraw") filed by Michael Shemtoub ("Shemtoub") on March 11, 2010. [Docket Entry No. 10].

In support of this Objection, Wyndham states as follows:

1. On or about December 7, 2009 (the "Petition Date"), TOA, LLC d/b/a The Owners' Advocate (the "Debtor" or "TOA") filed a voluntary petition under Chapter 7 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Central District of California.

2. On December 14, 2009, Wyndham filed a Motion to Transfer the TOA bankruptcy case to the United States Bankruptcy Court for the Middle District of Tennessee. The Motion to Transfer was granted without opposition and the case was transferred on or about February 11, 2010. [Docket Entry No. 2].

3. On February 17, 2010, Wyndham filed a Motion to Dismiss the above-captioned case (the "Motion to Dismiss"). [Docket Entry No. 7]. The Motion to Dismiss is set for hearing on March 23, 2010. The Debtor did not file any opposition to the Motion to Dismiss.

4. As discussed extensively in the Motion to Dismiss, immediately prior to the Petition Date, Wyndham had filed a Motion to Show Cause in certain litigation involving the

Debtor and Wyndham currently pending in the United States District Court for the Middle District of Tennessee.

5. The Motion to Withdraw merely states that Shemtoub is not licensed to practice law in the Middle District of Tennessee. [Motion to Withdraw, ¶ 4]. The Motion does not describe any efforts by either Shemtoub or TOA, LLC (the "Debtor") to obtain local counsel.

6. At the Debtor's meeting of creditors on March 15, 2010, the principal of the Debtor, David Humphrey, was informed that the Debtor needed to obtain counsel. To date (a week later), no counsel has filed an appearance on behalf of the Debtor.

7. Wyndham objects to the Motion to Withdraw to the extent the relief sought in such motion would have any effect on the Motion to Dismiss. Because the Motion to Dismiss was filed on February 17, 2010 and the hearing on the Motion was not set until March 23, 2010, the Debtor and Shemtoub have had notice of the Motion and the hearing on the Motion for 33 days¹. Further, the Debtor's case was transferred to this Court almost 40 days ago. The Debtor has had ample time to obtain the services of local counsel and Shemtoub has had sufficient time to engage the assistance of local counsel prior to the hearing on the Motion to Dismiss.

8. The Debtor and Shemtoub's delay in obtaining the services of local counsel should not be allowed to delay this case from proceeding in any manner. As set forth in the Motion to Dismiss, the Debtor's conduct is a continuing attempt to postpone the pending District Court litigation. Any additional delay based on the Motion to Withdraw would cause Wyndham additional prejudice.

¹ Again, the Debtor did not file any response to the Motion to Dismiss. Once good faith is called into question the burden shifts to the debtor to prove good faith to avoid dismissal. *Tamacki v. Frank (In re Tamacki)*, 229 F.3d 205, 207 (3rd Cir. 2000).

Respectfully submitted,

/s/ Courtney S. Gilmer

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Attorneys for Wyndham Vacation Resorts, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all parties entitled to and requesting electronic notice as well as by placing a copy of same in the U.S. Mail, first-class postage prepaid and properly addressed to the following:

Also via email attachment to David Humphrey, Principal of the Debtor

TOA, LLC
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This 22nd day of March, 2010.

Courtney H. Gilmer